APPEAL NO. 92128
FILED MAY 11, 1992

On March 3, 1991, a contested case hearing was held at _____, Texas, (hearing officer) presiding as hearing officer. He determined the appellant did not sustain an injury which arose out of and in the course and scope of his employment and denied benefits under the Texas Workers' Compensation Act, TEX. REV. STAT. ANN. arts. 8308-1.01 *et seq* (Vernon Supp 1992) (1989 Act). The appellant disagrees with certain of the hearing officer's findings and asks that we review them and either reverse and render a new decision or remand the case for a second contested case hearing.

DECISION

Determining that the findings, conclusions and decision of the hearing officer are not so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust, we affirm. In re King's Estate, 244 S.W.2d 660 (Tex 1951).

The appellant worked for (employer) who carried workers' compensation coverage with the respondent. The appellant testified that on October 10th, he worked on repairing an overhead door for his employer for about seven hours. He stated the work was strenuous and that he felt bad and complained about having back pain. He stated he did complain "[n]ot severely, not, well, I'll say, crying about it, but a man doesn't sit in the position we were sitting in for ten minutes at a time and not get up and stretch and say, `my back kind of hurts' or show some type of strenuous work has been done." He said that he told his supervisor, BJ, that his back was hurting and "I told him that for this very reason, so that there wouldn't be a question about it later, which there still is." This occurred on Thursday and the appellant worked the following day. The appellant indicated that his back hurt but not to the point of not being able to work. That evening he talked to some friends about a trail ride they had planned for the next day. The appellant indicated his back was sore and he might not be able to participate as much as he usually did. The next day he did go on the trail ride with his family and rode his horse for "maybe a couple of hours" but not "as much as usual." The next day, Sunday the 13th of October, he rode his horse for about 30 minutes and then rode in a wagon. While riding in the wagon he picked up his little girl from his wife's lap and put her on his lap. He felt pain in his back when he did this and told his wife "that kind of hurt." After that, his back got worse as the day wore on resulting in his going to the emergency room of a local hospital that evening where he was diagnosed as having sustained a back strain on October 13th. At the hospital, he listed his group health insurance as his coverage rather than workers' compensation coverage (he was aware of workers' compensation coverage as he had filed a claim earlier in 1991) because he hadn't determined "which way to go" and also didn't want to lose a $50 bonus for everyone for going three months without a lost time injury. He called his second level supervisor on Monday the 14th of October and stated at that time that he hurt his back on the job but that he didn't know how he was going to handle it.

Two witnesses testified they were personal friends of the appellant and had

participated in the trail ride. They stated the appellant had told them he had hurt his back at work and had talked about his back during the weekend. They also indicated the appellant hurt his back when he lifted his daughter during the trail ride.

The appellant's wife testified that her husband complained of back pain after work on October 10th and again on the morning of October 11th before he went to work. She also stated that because of his back pain he couldn't participate in the trail ride to his normal potential. Regarding the appellant's picking up of his daughter, his wife stated that the appellant's facial expression "said it hurt a little bit, and more so later, you (the appellant) said it had gotten a lot worse."

The respondent called two witnesses and introduced the statement of three other witnesses. BJ testified that "nothing appeared out of normal" with the appellant on October 10th and that he did not hear the appellant indicate he was injured or that his back hurt. He testified that the appellant did not report an on the job injury on the 10th or 11th of October to his knowledge. He indicated they were doing normal work, nothing out of the ordinary. He stated the appellant clowned around and danced kind of a "Rambo deal" after the door was repaired and did not act as if he were injured.

The plant manager, MJ, testified that she was present at the work location on October 10th and did not notice any indication that the appellant was injured. She stated the appellant did not report any injury to her on the 10th or 11th and that the first she had any knowlege of the alleged injury was on Monday the 14th when the appellant called her.

The three statements from coworkers who worked with the appellant on October 10th all indicate the appellant never said anything about injuring himself nor did he appear to be injured or to have any problem at all.

Appellant disagrees with the hearing officer's findings of fact that:

Finding 4:Claimant did not report an on the job injury on October 10th, to Claimant's coworkers.

Finding 6:Claimant sustained a back strain on Sunday, October 13th, at 11:00 o'clock a.m. while lifting Claimant's daughter into Claimant's lap during the trail ride.

Finding 8.Claimant did not sustain an injury with Employer on October 10th.

The hearing officer is the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given it. Article 8308-6.34(e). He is charged with the responsibility and authority, as the fact finder, to resolve conflicts in the evidence and determine the facts of the case. Garza v. Commercial Insurance Co. of Newark, N.J., 508

S.W.2d 701 (Tex.Civ.App.-Amarillo 1974, no writ). Even where there are different inferences that can be drawn from the evidence than those drawn by the hearing officer, this is not a sound basis to reverse a decision if there is probative evidence to support the determinations of the hearing officer. Texas Workers' Compensation Commission Appeal No. 92062 (Docket No. TY-91-123256-01-CC-TY41) decided April 2, 1991; Texas Workers' Compensation Commission Appeal No. 91102 (Docket No. FW-A-129124-01-CC-FW31) decided January 22, 1992.

The Claimant has the burden of proving by a preponderance of the evidence that an injury occurred within the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W. 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). As the trier of fact, the hearing officer is not required to accept a claimant's testimony at face value (Bullard v. Universal Underwriters' Insurance Co., 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ)) although a claimaint's testimony alone can be sufficient to establish that an injury occurred (Gee v. Liberty Mutual Insurance Co. 765 S.W.2d 394 (Tex 1989)). However, the claimant must link the contended injury to an event at the work place and establish a causal relationship between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92108 (Docket No. FW-91132653-01-CC-FW41) decided May 8, 1992. It is apparent the hearing officer did not accept the appellant's testimony regarding an injury at his work place and found the evidence more convincing that the injury occurred at the trail ride. Clearly, there was probative evidence from which he could so find.

We have reviewed the testimony of the witnesses and the evidence accepted at the contested case hearing and find it sufficient to support the hearing officer's findings and conclusions. While there may be some inconsistencies in some of the testimony, we do not find a basis for the total rejection of any of the witnesses' testimony. *See* Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Ft. Worth 1947, no writ).

The decision is affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Philip F. O'Neill
Appeals Judge

_____
Sue M. Kelley
Appeals Judge